

SAN LUIS OBISPO COUNTY

FAMILY CARE AND MEDICAL LEAVE POLICY

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SAN LUIS OBISPO COUNTY

FAMILY CARE AND MEDICAL LEAVE POLICY

I. GENERAL POLICY STATEMENT

To the extent not already provided for under current leave policies and ordinance, the County of San Luis Obispo (hereinafter “County”) will provide family and medical care leave and pregnancy disability leave for eligible employees as required by state and federal law. The following provisions set forth certain rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), the regulations of the California Family Rights Act (“CFRA”) and Government Code Section 12945, The California Pregnancy Disability Act (PDL). Unless otherwise provided by this policy, “leave” under this policy shall mean leave pursuant to the FMLA, CFRA, and/or PDL. This policy may be modified at the discretion of the Human Resources Director in order to comply with changes in State or Federal law, or for administrative reasons.

II. QUALIFYING REASONS FOR FMLA/CFRA/PDL DESIGNATION

Leave will be designated as FMLA, CFRA and/or PDL for the following reasons:

- A. The birth of a child or to care for a newborn of an employee;
- B. The placement of a child with an employee in connection with the adoption or foster care of a child;
- C. Leave to care for a child, parent, spouse who has a serious health condition (FMLA/CFRA), or to care for a registered domestic partner who has a serious health condition (CFRA);
- D. Leave because of a serious health condition (including a workers compensation injury/illness) that makes the employee unable to perform the functions of his/her position;
- E. Leave required as a result of pregnancy disability to the extent that a health care provider determines leave of absence to be necessary (under PDL).
- F. Leave for a “qualifying exigency” may be taken arising out of the fact that an employee’s spouse, son, daughter, or parent is on covered active duty or call to active duty status (under FMLA only, not CFRA); or

- G. Leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under FMLA only, not CFRA).

III. EMPLOYEES ELIGIBLE FOR LEAVE

- A. An employee is eligible for FMLA/CFRA leave if the employee:
 - 1. Has been employed for at least 12 months; and
 - 2. Has *worked* 1,250 hours during the 12-month period immediately preceding the commencement of the leave (The hours must be Fair Labor Standards Act “FLSA” working hours).
- B. Women who are disabled due to pregnancy may take Pregnancy Disability Leave regardless of length of service or hours worked per year.
- C. Eligibility for FMLA or CFRA must be approved by County Human Resources.

IV. AMOUNT OF LEAVE

Eligible employees are entitled to a total of 12 workweeks (or 26 weeks to care for a covered servicemember) of FMLA/CFRA leave during any 12-month period. When FMLA and CFRA leaves may be designated concurrently, the County will do so. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first. Employees are entitled up to four (4) months of Pregnancy Disability Leave in any 12-month period, however such leave will run concurrent with FMLA leave if not already exhausted. Leave under this policy is unpaid; however, employees may code paid leave balances pursuant to this policy.

A. Minimum Duration of Leave

If leave is requested to care for a child, parent, spouse or for the employee’s own serious health condition, there is no minimum amount of leave that must be taken; however, the notice and medical certification provisions of this policy must be complied with.

If leave is requested for the birth, adoption or foster care placement of a child (bonding), it must be concluded by the child’s first birthday, or within one year of

placement for adoption/foster care. Such leave must be taken in increments of no less than two weeks; however the employee may take shorter leave on two occasions during the year (2 C.C.R. Sec. 7297.3(d)). Additional short duration leaves for the above stated purpose may be granted by approval of the Appointing Authority if in the best interest of the County.

B. Parents Both Employed by the County

Baby-Bonding / Adoption - When both parents are employed by the County, the aggregate number of workweeks of leave to which both may be entitled shall be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child.

Care of a Covered Servicemember - When both parents are employed by the County, the aggregate number of workweeks of leave to which both may be entitled shall be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember.

Except as noted above, this limitation does not apply to any other type of leave under this policy.

V. EMPLOYEE BENEFITS WHILE ON LEAVE

While on leave pursuant to FMLA/CFRA/PDL, employees will continue to be covered by the County's group health insurance to the same extent that coverage is provided while the employee is on the job. Such coverage shall not be provided beyond 12 weeks in any 12-month period. However, employees who have elected to receive Cafeteria Cash-Out in lieu of group health insurance will not receive that cash-out while on leave unless they code 20 hours of paid time or coordinating time (see section VI.B.1.) each week. The County will continue to pay the premiums for the County-sponsored vision and dental plans during the employee's leave period.

Non-health benefits such as bilingual pay, uniform allowance, tool allowance, on-call pay, or other task-related benefits may be suspended during FMLA/CFRA/PDL leave at the discretion of the appointing authority.

When allowed by policy and law, employees who have elected certain voluntary, non-health related benefits, may elect to continue to make the appropriate contributions for continued coverage while on leave either by payroll deduction if coding time, or by direct payments submitted to the Auditor's Office. An employee's coverage on a particular plan may be dropped if the employee is more than 30 days late in making a premium payment. The employee will receive a notice at least 15 days before coverage is to cease, advising that he/she will be dropped if the employee's premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occur while the employee is on leave.

Employees are responsible for making their own arrangements with the San Luis Obispo County Pension Trust for the purchase of Pension Trust Service Credit during the time the employee is on any approved leave of absence without pay.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the County shall have the right to recover its share of health plan premiums for the entire leave period unless the employee's failure to return to work is authorized or excused by the County. The County shall have the right to recover premiums through deduction from any sums due the County. (e.g. unpaid wages, vacation pay, etc.)

VI. USE OF PAID ACCRUED LEAVE BALANCES WHILE ON FMLA/CFRA

A. Employee's Right to Use Paid Accrued Leave Balances while on FMLA/CFRA/PDL

If an employee has any accrued paid leave balances, (sick leave, vacation leave, administrative leave, compensatory time or other paid leave balance), that paid leave may be used up to their regular allocation during FMLA/CFRA/PDL to the extent allowed by policy and ordinance.

B. County's Right to Require Use of Paid Leave while on FMLA/CFRA/PDL

The County requires that employees who *are not* working during a leave of absence and who have paid leave balances (sick leave, vacation leave, administrative leave, compensatory time, or other paid leave balance) must code a minimum of twenty (20) hours of paid leave per week while on FMLA/CFRA/PDL. Employees who have exhausted all of their paid leave balances must code leave without pay (LWOP) while on FMLA/CFRA/PDL. Employees who *are* working a reduced work schedule or taking intermittent leave while on FMLA/CFRA/PDL must code a minimum of twenty (20) hours of combined work time and paid leave balances.

1. Coordinating Time - An employee who is receiving compensation through State Disability Insurance, Workers Compensation, Paid Family Leave, or other income replacement source must code paid leave balances in an amount such that the total of other compensation and County salary does not exceed the employee's normal salary.
2. Compensatory Time (Comp Time) - Employees are required to use any and all accrued comp time (time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act) while on leave.
3. Sick Leave - Employees may only code sick leave concurrently while on FMLA/CFRA/PDL if the leave is for the employee's own serious health

condition or if the leave is needed to care for a relative of the first degree, registered domestic partner of the employee or child of such domestic partner with a serious health condition. The use of sick leave must be consistent with County Code chapter 2.44.060.

4. Voluntary Time Off - No Voluntary Time Off (VTO) may be granted to any employee in conjunction with FMLA/CFRA/PDL leave.

C. County's Right to Require an Employee to Exhaust FMLA/CFRA/PDL Leave Concurrently with Other Leaves

If an employee takes paid time off in the form of sick leave, vacation leave, administrative leave, comp time or other paid time off, and the reason for that leave is for an FMLA/CFRA/PDL qualifying event, the County may designate that leave as running concurrently with the employee's 12-week FMLA/CFRA/PDL entitlement.

VII. MEDICAL CERTIFICATION

When requested by their department, employees who request leave for their own serious health condition, pregnancy disability leave, or to care for a child, parent or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care. If the leave is requested because of the employee's own serious health condition, or pregnancy disability, the certification must include a statement that the employee is unable to work or is unable to perform the functions of his/her position, and the anticipated duration of the leave.

Recertification, clarification, authentication, and/or additional certifications may be required in accordance with the provisions of state and federal law.

Employees who request leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness. The first time a servicemember-employee requests leave because of a qualifying exigency, the County may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or call to active duty status in a foreign country, and the dates of the covered military member's active duty service. A copy of new active duty orders or similar documentation shall be provided to the County if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member.

A. Time to Provide a Certification

When an employee's leave is foreseeable and at least 30 days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the County within the timeframe requested by the County (which must allow at least fifteen (15) calendar days after the County's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences for Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete medical certification the employee will be given a reasonable opportunity to cure any such deficiency. If an employee fails to provide a medical certification within the timeframe established by this policy, the County may delay the granting of leave until the required certification is provided.

C. Intermittent Leave or Leave on a Reduced Work Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced work schedule for a qualifying event, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced work schedule.

VIII. EMPLOYEE NOTICE OF LEAVE

Although the County recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. Except for qualifying exigency leave, if leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be given orally or in writing. If the County determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the County may delay the granting of the leave until it can, in its discretion, adequately cover the duties of the position.

For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

The County shall respond to the leave request as soon as practicable, and in any event no later than ten (10) calendar days after receiving the request. The County shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

IX. REINSTATEMENT UPON RETURN FROM LEAVE

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA/PDL period.

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a certification for return to work from their health care provider stating that the employee is able to return to work with or without restrictions. Failure to provide such certification will result in denial of reinstatement.

For those employees whose leave was NOT due to the employee's own serious health condition, if a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and County, the employee will be reinstated within two business days, where feasible, after the employee notifies the County of his/her readiness to return.

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

X. REQUIRED FORMS AND APPROVALS

Employees must fill out or provide the following forms in connection with leave under this policy:

- A. Required Request Form – Employee must submit a request for leave on a form approved by County Human Resources in order to be eligible for leave. In certain cases, the employee's department may fill out the request when the employee is unable. This request form is attached to this policy as an exhibit, and is available on the County intranet at <http://myslo.intra/HR/Forms.htm>. **NOTE: EMPLOYEES WILL RECEIVE A COUNTY RESPONSE TO THEIR REQUEST.**
- B. Medical Certification – When requested by their department, an employee must provide a written medical certification from his/her health care provider, either for the employee's own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner. (See Section VII of this policy; the necessary certification form is available on the County intranet at <http://myslo.intra/HR/Forms.htm>.)

- C. Certification for Return-to-Work – Prior to returning to duty, all employees must submit a signed document (doctor’s note) from their health care provider stating that they are able to return to work with or without restrictions. County HR may require additional return to work certification from the health care provider and will provide necessary forms for that purpose.

XI. DEFINITIONS

For the purposes of this policy only, and consistent with the FMLA and CFRA, the following definitions shall apply:

- A. “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B. “Single 12-month period” means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered service-member and ends 12 months after that date. [29 C.F.R. § 825.127(c)(1)]
- C. “Child” means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child.

A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living — such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

- D. “Parent” means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis (in place of a parent) to an employee. This term does not include parents-in-law.
- E. “Spouse” means a husband or wife as defined or recognized under California State law for purposes of marriage.
- F. “Registered Domestic Partner,” as defined by Family Code §§ 297 and 299.2, shall have the same meaning as “Spouse” for purposes of CFRA Leave.
- G. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:

1. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
2. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a) A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity; or
 - ii) Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over-the-counter and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
 - b) Any period of incapacity due to pregnancy or for prenatal care. This entitles the employee to FMLA leave, but not CFRA leave. (Under California law, an employee disabled by pregnancy is entitled to Pregnancy Disability Leave.)
 - c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;
 - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

- d) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

H. "Health Care Provider" means either:

- 1. An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code or an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the serious health condition, or
- 2. Any other person who meets the definition of others "capable of providing health care services," as set forth in FMLA and its implementing regulations.

I. "Covered active duty" means: (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country, or (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions

J. "Covered Servicemember" means (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

- K. "Outpatient Status" means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- L. "Next of Kin of a Covered Servicemember" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
- M. "Serious Injury or Illness": (1) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or (2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.